

CIV 2005-

Part I of the Judicature Amendment Act 1972

Part VII of the High Court Rules

VODAFONE NEW ZEALAND LIMITED, a duly incorporated company having its registered office at Auckland, Telecommunications Company

THE COMMERCE COMMISSION, a Crown entity established by section 8 of the Commerce Act 1986

THE MINISTER OF COMMUNICATIONS, the Minister appointed by the Crown to administer the Telecommunications Act 2001

Second Respondent

STATEMENT OF CLAIM IN APPLICATION FOR REVIEW
29 JUNE 2005

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The Applicant says:

The parties

1. It is a duly incorporated company have its registered office at Auckland. It is the owner and operator of a mobile telecommunications network and it carries on business as a mobile telecommunications company.
2. The First Respondent, the Commerce Commission ("**Commission**"), is a Crown entity established by section 8 of the Commerce Act 1986 and has its head office at Wellington.
3. The Minister of Communications ("**Minister**") is the Minister of the Crown who is responsible for the administration of the Telecommunications Act 2001 ("**Act**").

The Act

4. The Act governs the policy and procedure of regulating the supply of telecommunications in New Zealand.
5. The main purpose of the Act is set out in section 3(1):
 - (1) The main purpose of this Act is to regulate the supply of telecommunications services.

Regulation of telecommunications services

6. Telecommunications services which are regulated under the Act are those contained in Schedule 1, which are classified as either "designated services" under Part 1 of Schedule 1 (which in turn may be either "designated access services" or "designated multi-network services") or "specified services" under Part 2 of Schedule 1.
7. Part 2 and Schedule 3 of the Act contain provisions for the altering of regulated telecommunications services.
8. The purpose of Part 2 and Schedules 1-3 of the Act is set out in Section 18:
 - (1) The purpose of this Part and Schedules 1 to 3 is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers.
 - (2) In determining whether or not, or the extent to which, any act or omission will result, or will be likely to result, in competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand, the efficiencies that will result, or will be likely to result, from that act or omission must be considered.
 - (3) Except as otherwise expressly provided, nothing in this Act limits the application of this section.
 - (4) Subsection (3) is for the avoidance of doubt.
9. Section 19 of the Act requires the Commissioner and the Minister, in making any recommendation, determination or decision under Part 2 or Schedules 1-3 of the Act, to:

- (a) consider the purpose set out in section 18; and
 - (b) if applicable, consider the additional matters set out in Schedule 1 regarding the application of section 18; and
 - (c) make the recommendation, determination, or decision that the Commissioner or Minister considers best gives, or is likely to best give, effect to the purpose set out in section 18.
- 10. Schedule 3 of the Act sets out the procedure for altering regulated telecommunications services.
- 11. Under Clause 1 of Schedule 3, the Commission may, on its own initiative, if the Commission is satisfied that there are reasonable grounds for an investigation into the matter, commence an investigation into whether or not Schedule 1 should be altered.
- 12. If the Commission does commence an investigation it must:
 - (a) give public notice of the commencement of the investigation (cl 1(3));
 - (b) prepare a draft report and give public notice of that draft report (cl 2(1));
 - (c) include in the draft report the detail of the proposed alteration to Schedule 1 (cl 2(2));
 - (d) specify a closing date for public submissions on the draft report (cl 2(1)(c)(i));
 - (e) hold conferences or public hearings in relation to the proposed alteration (cl 3(1));
 - (f) prepare a final report regarding the proposed alteration and deliver that report to the Minister (cl 4(1));
 - (g) in preparing the final report, consider all submissions made on the draft report and all information and opinions presented or expressed at the public hearing on the draft report (cl 4(2)).
- 13. After receiving the final report, the Minister may either accept or reject the Commission's recommendation or require the Commission to reconsider its recommendation for any reasons specified by the Minister (cl 6).
- 14. Section 66 provides, *inter alia*, that the Governor General may, by Order in Council made on the recommendation of the Minister, amend the regulated telecommunication services to add or delete a designated or specified service.

Decision to investigate (Schedule 3, Clause 1)

- 15. On or about 13 May 2004, the Commission publicly notified its intention to investigate mobile termination services ("Investigation").
- 16. Mobile termination is the delivery of a voice call which originated on another network for termination on a cellular mobile network to a mobile customer on that network.

17. On 29 April 2004, the Commission publicly notified its decision to investigate mobile termination services.
18. On 21 June 2004, the Commission published an issues paper to begin public consultation on its Investigation.
19. On 18 October 2004, the Commission published a draft report on its Investigation.

Draft report

20. The Commission recommended in its draft report that:

The Commission recommends that the termination of voice calls on a non 3G cellular mobile telephone network be made a designated access service...
21. The Commission's recommendation was said to be based on the following conclusions:
 - (a) there is limited competition in the markets for terminating voice calls on each of Telecom's and Vodafone's mobile networks and there is limited competition in the retail market for tolls and fixed to mobile calls;
 - (b) a reduction in mobile termination rates is likely to result in increased competition leading to benefits to end-users through the lowering of the retail price of fixed to mobile calls;
 - (c) the waterbed effect is not likely to lead to a rise in the price of mobile services to the detriment of the end-users of mobile services; and
 - (d) substantial net benefits are likely to arise from making mobile termination a designated access service.
22. The Commission received submissions on the draft report, including from the Applicant.
23. From 23 to 25 February 2005, the Commission held a conference to discuss the submissions received in relation to the draft report ("**Conference**").
24. The Applicant was represented at the Conference and presented oral submissions on the draft report in addition to its written submission.

Final report

25. On 9 June 2005, the Commission released its final report on the Investigation ("**Report**").
26. The Report recommended that mobile termination services, other than those terminating on a third ("**3G**") or later generation mobile network, be made a designated service.
27. Although the recommendation in the Report did not materially differ from that in the draft report, the basis for the recommendation was materially different.

Particulars

- (a) The Commission altered its justification and relied on a new cost-benefit analysis including:
 - (i) adopting the Applicant's model and significantly altering its inputs;
 - (ii) omitting an allowance for the indirect costs of regulation in its cost-benefit analysis;
 - (iii) accepting that regulating the price of mobile termination services would lead to an increase in the price of other mobile services (the "waterbed effect") and including the waterbed effect in its cost-benefit analysis;
 - (iv) in part justifying its conclusions by a sensitivity analysis of its cost-benefit analysis; and
 - (v) by relying on a new report by Argo on the competitiveness of New Zealand mobile services.

Reviewable exercise of power

- 28. In making its recommendation, the Commission was:
 - (a) exercising or purporting to exercise, a statutory power of decision in terms of the Judicature Amendment Act 1972; and/or
 - (b) acting as a person exercising a power which could affect the public interest; and/or
 - (c) performing a public function or a power conferred by law to make a decision in respect of the rights, obligations or interests of participants in the mobile telecommunications services market.
- 29. The Applicant is the party most affected by the Commission's recommendation.

Particulars

- (a) It is the only exclusively mobile operator without an integrated fixed network;
- (b) The only other network currently providing mobile telecommunications services is owned by Telecom New Zealand Limited ("Telecom"). Telecom's network is integrated in that it has fixed and mobile networks is thereby able to sell services in the fixed to mobile and tolls market.

FIRST CAUSE OF ACTION – ERROR OF LAW

- 30. The Commission's Report was wrong in law in each of the ways set out in paragraphs 31 to 44 herein. As a consequence of each error or a combination of those errors, the Commission's conclusion that mobile termination services should be regulated was legally incorrect.

First error: erroneous market definition

31. The Commission erred in defining the provision of mobile termination services on each mobile network as a separate market.

Particulars

- (a) The market definition of mobile termination services is too narrow to enable identification of the relevant commercial constraints under which the terms of supply of mobile termination services are determined.
 - (b) Telecommunications services, including mobile termination, are supplied and purchased in bundles. Mobile service suppliers do not supply, and consumers do not purchase, mobile termination services in isolation from mobile origination services.
 - (c) Complementarities in demand and production mean that suppliers will only be able to compete for customers by offering both types of services: termination and origination.
 - (d) For these reasons, mobile termination services are part of a cluster or two-sided, that is a termination and origination, market.
 - (e) The Commission recognised the complementarities in demand and production of mobile services when it concluded, some time after the conference, that the suppression of mobile termination charges would result in an increase in other mobile service costs (referred to as the "waterbed effect"). However, the Commission failed to reconsider its definition of mobile termination as a separate market once it accepted that these factors were material.
32. Accordingly, the Commission erred in concluding that mobile termination services on each mobile network were separate stand alone markets.

Second error: erroneous interpretation of the purpose of the Act

33. The Commission erred in concluding that transfers of supplier wealth through regulation ("**wealth transfers**") should count as a benefit to end-users as such wealth transfers are inconsistent with the purpose of the Act.

Particulars

- (a) The Commission's interpretation is inconsistent with sections 18 and 19 of the Act.
- (b) The purpose of Part 2 of the Act is the promotion of competition for the long-term benefit of end-users.
- (c) The promotion of competition for the long-term benefit of end-users involves a consideration of economic efficiencies.
- (d) Those economic efficiencies do not involve wealth transfers between suppliers or from suppliers to consumers.

- (e) Section 18 was intended to mirror the purpose sections of the Commerce Act 1986 (sections 1A and 3A).
 - (f) The purpose of the Commerce Act 1986 has been held not to include the treatment of wealth transfers as a benefit because that does not result in economic efficiencies.
 - (g) Wealth transfers may be appropriate and economically justifiable in some contexts, such as are addressed under Part IV of the Commerce Act 1986, but mobile termination is not one of those and the Investigation was not conducted under the Commerce Act 1986.
34. Accordingly, the Commission erred in assessing that transfers of wealth should be considered a benefit to end-users.

Third error: failure to base pass through rates on evidence

35. The Commission erred in concluding the rates at which changes in wholesale level charges would be passed through into retail prices ("**pass through**").

Particulars

- (a) The only empirical evidence of pass through rates which was before the Commission was derived from historical information provided by the Applicant and by Telecom. It concerned the rate at which retail prices for fixed to mobile calls changed relative to changes in mobile termination rates.
 - (b) The Commission dismissed the historical pass through rate evidence.
 - (c) The Commission assumed the value of three pass through rates: factual (that is, if there were regulation) fixed to mobile rates, counter-factual (that is, if there were no regulation) fixed to mobile rates and a mobile pass through rate that determined the size of the waterbed effect.
 - (d) The Commission failed to identify any evidence whatsoever to support the pass through rates it adopted in its Report.
36. Accordingly, the Commission has made a finding which is not supported by any evidence.

Fourth error: failure to take into account the indirect costs of regulation

37. In analysing the benefits of regulation, the Commission erred when it failed to take into account a relevant consideration being the indirect costs of regulation.

Particulars

- (a) Based on the accepted view that regulated prices are not socially optimal, historically the Commission has explicitly included an allowance for indirect costs in its cost-benefit analysis of proposed regulations. This is intended to reflect the factors that might reduce the benefit of regulation, but are not otherwise provided for in its benefits analyses.

- (b) The Commission accepted that it was appropriate to take into account the indirect costs of regulation, and explicitly did so in its draft report. In the modelling on which the final Report is based, this allowance for indirect costs was removed.
 - (c) The Commission stated in its Report that it had “explicitly and separately addressed these costs” (para 469).
 - (d) However, the Commission has failed to make any new allowance for indirect costs in its Report, which is not materially different to the draft report in this regard apart from the removal of an allowance for indirect costs.
38. Accordingly, the Commission has failed to take into account a relevant consideration in its analysis of the benefits of regulation.

Fifth error: inadequate sensitivity analysis

39. The Commission in justifying its conclusions relied, in part on a sensitivity analysis (Appendix A).
40. The sensitivity analysis used for that justification is intended to reflect the effect that changes in the parameters of the cost-benefit model might have on the Commission’s analysis of the net benefits of regulation.
41. The Commission erred in preparing its sensitivity analysis.

Particulars

- (a) The Commission’s sensitivity analysis failed to take adequate account of changes to more than one parameter co-existing at any one time.
 - (b) The Commission’s sensitivity analysis failed to take into account the indirect costs of regulation.
42. Accordingly, the Commission’s sensitivity analysis is fundamentally flawed and should not have been relied on by the Commission in making its recommendation.

Sixth error: failure to properly define the service specification

43. The Commission erred in law by failing to properly define the “network technology” that is “third generation” (“3G”).

Particulars

- (a) The Commission’s recommendation relates only to the termination of voice calls where the cellular telephone network technology used for the termination of those calls is not 3G or later technology (paragraph 799 of the Report).
- (b) The Commission has identified that the definition of “third generation cellular telephone network” under the Act is not adequate for the recommended mobile termination designated service.
- (c) The definition of “third generation cellular telephone network” in Schedule 1 to the Act defines 3G as a cellular telephone network

based on the IMT2000 set of radio technology standards ("Standards").

- (d) Telecom has claimed that most of its present 027 network is 3G.
 - (e) Telecom's 027 network possibly embodies many of the Standards meaning that it could meet the definition of 3G under the Act. Most of Telecom's mobile customers use this 027 network.
 - (f) The Commission has stated (at paragraph 801 of the Report) that it intended to capture all of Telecom's existing mobile termination services in its recommendation.
 - (g) If Telecom's 027 network meets the Standards and so is defined as 3G, the regulation of mobile termination rates would primarily fall on the Applicant, meaning that regulation will have an unjustifiable and unintended asymmetrical effect.
44. The service specification accordingly fails to define 3G technology in a way that ensures regulation includes voice calls to Telecom's existing 027 network as well as the Applicant's existing mobile networks.

Effect of the errors

45. Each of the errors identified in paragraphs 31 to 44 above were relied upon by, and were material to, the Commission in making its recommendation to the Minister to regulate mobile termination services.
46. Accordingly, the Commission's recommendation is based on errors of law and should be set aside.

Claim for relief

- A. A declaration that the Commission's recommendation is wrong in law, invalid and of no effect.
- B. An order, pursuant to s4(2) Judicature Amendment Act 1972, setting aside the Commission's recommendation.
- C. An order referring the matter back to the Commission for reconsideration.
- D. Such other orders as the Court sees fit.
- E. Costs.

SECOND CAUSE OF ACTION – BREACH OF NATURAL JUSTICE

47. Section 27 of the New Zealand Bill of Rights Act 1990 ("NZBORA"), provides that every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
48. The principles of natural justice include a right of the affected party to be informed and to be heard.
49. The recommendation by the Commission, if accepted by the Minister, will affect the amount the Applicant is able to charge for mobile termination, the effect of which is to substantially impact upon the Applicant's ability to

generate profits and invest. It will also have a detrimental impact on the Applicant's customers.

50. The recommendation by the Commission is a determination in respect of the rights and interests of the Applicant and accordingly the Applicant is entitled to have the Commission observe the principles of natural justice in respect of its rights.
51. The cost-benefit analysis model ("**Model**") contained in the Report, which forms the basis of the Commission's recommendation, differed in fundamental ways from the Model contained in the draft report.
52. These differences included not only a complete change to structure of the model between the draft report and the final Report, but the Commission also changed its inputs into the model between the draft and final models.

Particulars

- (a) In the draft report, the Commission included the indirect costs of regulation in the Model, thereby, scaling back the net benefits.
 - (b) The Commission's method of analysing indirect costs was criticised by the Applicant and other parties. However, no party suggested that indirect costs should not be taken into account at all.
 - (c) In its previous investigations into proposed regulation, the Commission has included indirect costs in its cost-benefit analyses.
 - (d) In the final Report, the Commission did not include indirect costs in the Model.
 - (e) The inclusion or exclusion of indirect costs in the model has significant effects on the amount of net benefits arising from regulation.
 - (f) The draft report did not include the "waterbed effect" in the cost-benefit analysis.
 - (g) The Applicant and other parties, in submissions and at the Conference, argued that the waterbed effect should be taken into account in the Commission's benefit analysis.
 - (h) The main focus of those submissions was on whether the waterbed effect should be included in the Model at all. Because it had not been included in the draft report, and because this model was itself deficient in several respects, the Applicant did not address details of the way the waterbed effect could be incorporated into the Commission's Model.
 - (i) The Commission's final Report was based on a cost-benefit model that is very different from the one that supported the draft report. The inclusion of a waterbed effect in this model has a significant effect on the Model, as do other changes including the way the pass through is modelled and the elimination of indirect costs.
53. These changes to the structure and inputs on the Model were material in that they produced significantly different results than those modelled in the draft report.

54. The structure of the Model, and each of the inputs into it, are all highly contestable issues, as is apparent from the submissions made on the model in the draft report.
55. The Applicant was denied the opportunity to consider, be heard and have the Commission take into account its views on the changes to the Model and its inputs ("**denial of opportunity to be heard**").
56. This denial of opportunity to be heard constitutes a breach of natural justice and a breach of section 27 of the NZBORA.
57. Accordingly the Commission has not properly considered the Applicant's position in making its recommendation and the Report should be referred back to the Commission to allow the Applicant an opportunity to be heard in respect of the changes and to allow the Commission to consider the Applicant's views on the changes.

Claim for relief

- A. A declaration that the recommendation has been made in breach of s27 of the NZBORA.
- B. An order, pursuant to s4(5) of the Judicature Amendment Act 1972, that the Commission reconsider its recommendation.
- C. A declaration that the Minister should not accept the Commission's recommendation and should not recommend to the Governor General that he makes mobile termination services a designated service.
- D. A declaration that the Commission provide the Applicant with an opportunity to be heard and to have its views considered in respect of the Model contained in the Report.
- E. Such other orders as the Court sees fit.
- F. Costs.

THIRD CAUSE OF ACTION – DECLARATION IN RELATION TO THE EXERCISE OF POWER BY THE MINISTER CONSEQUENT UPON THE COMMISSION'S RECOMMENDATION

The Applicant repeats paragraphs 1 to 46 above and says:

58. The Minister may decide to either accept or reject the Commission's recommendation or require the Commission to reconsider its recommendation for any reasons specified by the Minister (Schedule 3, clause 6).
59. The effect of the Minister accepting the Commission's recommendation is that he will recommend to the Governor General that, in accordance with s66 of the Act, mobile termination services be made a designated service under Schedule 1 of the Act.
60. The Minister has indicated that he will make a decision in accordance with Schedule 1, clause 6 of the Act following the closing of submissions on the report on Friday, 1 July 2005.
61. The proposed decision is an exercise of a statutory power of decision.

62. If the Minister decides to accept the Commission's recommendation, it will be based on the Report which, for the reasons set out above, is wrong in law. As a result, any decision to accept the recommendation will also be wrong in law.

Claim for relief

- A. A declaration that the Report is wrong in law.
- B. An order, pursuant to s4(5) of the Judicature Amendment Act 1972, that the Commission reconsider its recommendation.
- C. A declaration that the Minister should not accept the Commission's recommendation and should not recommend to the Governor General that he makes mobile termination services a designated service.
- D. Such other orders as the Court sees fit.
- E. Costs.

This document is filed by **Allison Elizabeth Ferguson**, solicitor for the Applicant, of Wilson Harle. The address for service of the Applicant is 64 Fort Street, Auckland.

Documents for service may be left at that address or may be:

- (a) posted to the solicitor at PO Box 4539, Shortland Street, Auckland; or
- (b) left for the solicitor at a document exchange for direction to DX CP20507.

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
COMMERCIAL LIST**

CIV: 2005-404-3429

UNDER

Part I of the Judicature Amendment Act 1972

AND UNDER

Part VII of the High Court Rules

BETWEEN

VODAFONE NEW ZEALAND LIMITED, a duly
incorporated company having its registered office at
Auckland, Telecommunications Company

Applicant

AND

THE COMMERCE COMMISSION, a Crown entity
established by section 8 of the Commerce Act 1986

First Respondent

AND

THE MINISTER OF COMMUNICATIONS, the
Minister appointed by the Crown to administer the
Telecommunications Act 2001

Second Respondent

**NOTICE OF PROCEEDING
29 JUNE 2005**

W I L S O N ■ H A R L E

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TO: The above named Respondents

This proceeding is entered on the commercial list established at the office of this Court at Auckland,

TAKE NOTICE that unless within 28 days after the date on which this notice is served upon you, you file in this office of this Court at Auckland:

1. a statement of your defence to the Applicant's claim, a copy of which is served herewith; or
2. an appearance indicating that you oppose the Applicant's claim and that you wish to be heard in relation to it; or
3. an appearance under protest to jurisdiction; or
4. an appearance for ancillary purpose; or
5. an appearance reserving rights –

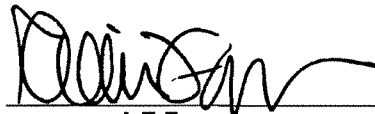
the Applicant may proceed to a hearing and judgment on the claim in your absence.

The trial of the proceeding, if a trial is necessary, will be held in this Court at Auckland at a time to be fixed by the Court.

As this proceeding is entered on a commercial list it cannot be tried before a jury.

A Commercial List Judge may, on the application of any party or on the Judge's own motion, order the removal of any proceeding from the Commercial List.

Dated ²⁹ June 2005

A handwritten signature in black ink, appearing to read 'A E Ferguson', written over a horizontal line.

A E Ferguson
Solicitor for the Applicant

Your attention is particularly directed to the memorandum attached hereto.

Admission of claim

9. If you admit the Applicant's claim or any part thereof, you may sign and file your admission in the office of the Court.
10. If this is not done before the expiration of the time limited for filing your statement of defence, you will be liable to pay any further costs which your delay may have caused the Applicant to incur.

Admission of part of claim for a sum of money

11. If you admit only part of the claim for a sum of money, you may, at the same time as the statement of defence is filed, or at any subsequent time before the proceeding is set down for trial:
 - (a) pay into the Court the amount admitted; and
 - (b) forthwith give notice in writing of the payment to the Applicant.
12. If the Applicant proceeds and recovers no greater amount than the amount you have paid into Court, the Applicant may be ordered to make a payment in respect of costs incurred by you subsequent to the service on the Applicant of notice of the payment.

Witnesses

13. Summonses for the attendance of witnesses will be issued on application at the office of the Court.




Office hours

The office hours of the Court are from ^{9:00}~~8:30~~ am to 5 pm except on Court holidays.

Dated

29th June

June 2005

 W Puketi

(Deputy) Registrar

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
COMMERCIAL LIST

CIV 2005-

| | |
|-----------|---|
| UNDER | Part I of the Judicature Amendment Act 1972 |
| AND UNDER | Part VII of the High Court Rules |
| BETWEEN | VODAFONE NEW ZEALAND LIMITED |
| | Applicant |
| AND | THE COMMERCE COMMISSION |
| | First Respondent |
| AND | THE MINISTER OF COMMUNICATIONS |
| | Second Respondent |

APPLICANT'S STATEMENT OF ISSUES
29 JUNE 2005

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INTRODUCTION

1. The First Respondent, the Commerce Commission ("**Commission**"), has issued a report dated 9 June 2005 ("**Report**"), pursuant to schedule 3 of the Telecommunications Act 2001 ("**Act**"), on its investigation into the regulation of mobile termination services. The Report recommends to the Minister of Communications that mobile termination services be a "designated access service" as defined in the Act ("**Recommendation**").
2. If the Minister accepts the Commission's Recommendation, he will recommend to the Governor General that the services regulated under the Act be amended to include mobile termination services.
3. The proceedings seek judicial review of the Report on the basis that it is wrong in law and that the Commission's investigation process has breached the principles of natural justice and the Applicant's rights under section 27 of the New Zealand Bill of Rights Act 1990.

ISSUES FOR DETERMINATION

4. The issues for determination are essentially as set out below.

Error of law

5. Whether the Report is wrong in law for any one or more of the following reasons:
 - (i) The Commission erred in defining mobile termination services on each mobile network as a separate stand alone market.
 - (ii) The Commission has wrongly interpreted the purpose provisions of the Act to include transfers of wealth from producer to producer, and from producer to consumer, as a benefit to end-users.
 - (iii) The Commission's assessment of the rate at which changes to wholesale level charges would be passed through to consumers (referred to as the "pass through rate") is wrong and the Commission has failed to identify any evidence to support its assessment.
 - (iv) In conducting its cost-benefit analysis, the Commission failed to take into account a relevant consideration, being the indirect costs of regulation.
 - (v) The sensitivity analysis conducted by the Commission on its cost-benefit analysis is inadequate.
 - (vi) The Commission's definition of the service specification fails to define 3G technology in a way that ensures regulation includes all voice calls on Telecom's existing 027 network.

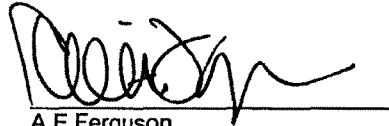
Breach of natural justice

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- (b) Whether the Commission's failure to allow the Applicant an opportunity to be heard, and have its views considered, on the material changes made to the Commission's cost-benefit analysis model and its inputs constitute a breach of the Applicant's right to natural justice.

Declaration in relation to the Minister

- (c) Whether a declaration should be made that the Report and Recommendation are wrong in law and should not be accepted by the Minister.

Dated 29 June 2005


A E Ferguson
Solicitor for the Applicant